



# California Fair Political Practices Commission

October 4, 1989

Teresa Craigie  
Pillsbury, Madison and Sutro  
P. O. Box 7880  
San Francisco, CA 94120

Gail Hutton  
City Attorney  
P. O. Box 2740  
Huntington Beach, CA 92647

Re: Your Requests for Advice  
Our File Nos. A-89-441 and A-89-452

Dear Ms. Craigie and Ms. Hutton:

This is in response to your requests for advice concerning the duties and obligations of your respective clients, Huntington Beach Company, and the employees and officials of the City of Huntington Beach under the Political Reform Act (the "Act").<sup>1</sup> Because your requests for advice are based on the same set of facts we have elected to respond to both requests in one advice letter.

## QUESTIONS

How should a VIP membership, a gift pass to the Seacliff Country Club (the "club"), given to certain public officials be valued:

1. For purposes of disclosure including disclosure pursuant to the lobbying provisions of the Act.
2. For purposes of disqualification.

<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

### CONCLUSIONS

1. Based on the facts provided, the value of the VIP membership for purposes of disclosure is the initiation and annual fees, whichever is applicable, plus the difference between the actual costs incurred by the public official if less than \$30 and the \$30 minimum monthly dining room fee, for each month of the reporting period. However, an official who receives a VIP membership but does not use it, nor transfers it to someone else, is not required to disclose receipt of the membership.

2. The value of the VIP membership for purposes of disqualification is the value based on the actual use, determined as described above, plus \$30 per month for each of the months in the future that the membership is valid. If the official returns the VIP membership card prior to the decision, the value of the VIP membership for purposes of disqualification is the value based on actual use during the past 12 months, determined as described above.

### FACTS

The Seacliff Country Club (the "Club") is a golf, tennis, swimming, fitness and social club owned and operated by Huntington Beach Company ("Huntington Beach"), a lobbyist employer. Huntington Beach distributed "VIP Memberships" to 153 business leaders, prominent citizens and realtors. You have indicated that this was done in order to promote and increase Club dining room usage. The recipients of these memberships included officials and employees of the City of Huntington Beach (the "city") and other state and local officials ("public officials").

The VIP memberships entitle the holders to dining room privileges only; such members may not use any of the other club facilities. VIP members are not required to pay any initiation or annual fees. Each time a VIP member uses the Club's dining room facilities, he or she is charged the same amount, and is billed in the same manner as any other Club member. No minimum monthly dining room charge applies. The use of the VIP membership by public officials varies. Some have never used the card, others routinely use the card and others use the card on an occasional basis.

The Club has ten different types of memberships, each of which has different privileges. The initiation fee and annual or monthly charges for a membership depend upon the type of membership.<sup>2</sup> For example, an individual could join as a "social member." Such a member would pay a \$150 initiation fee, a \$50

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<sup>2</sup> You have provided us with a chart describing the various types of memberships available at the club and the fees paid for those memberships. A copy of the chart is attached for ease of reference.

annual fee, and a \$30 per month dining room minimum. A golf membership would entitle an individual to golf, swimming, dining, banquet and VIP room privileges and would cost a \$20,000 initiation fee, a \$215 monthly fee, and an \$85 per month dining room minimum. For a tennis membership, an individual would have to pay an \$800 initiation fee and a \$100 monthly tennis court charge. Tennis members are not charged a dining room minimum.

Most, but not all, of the memberships have a dining room minimum. The member must pay the minimum regardless of whether he or she uses the dining room. A golf member, for example, must spend \$85 per month in the dining room. If he or she does not, he or she is charged \$85. On the other hand, if he or she charges \$85 or more in the dining room, he or she is billed for the actual dining room use.

In a telephone conversation on August 25th, you provided the following additional information:

1. All members are issued cards with the member's name on the card. The card is renewed annually.

2. Although technically only the person whose name is on the card may use the card, somebody else could use the card since the dining room staff would not question if someone other than the member were using the membership card.

3. The dining room consists of a lounge area and the dining room. The lounge has tables which may be used by card players. However, the club has cardrooms available to the members. These cardrooms are not available to persons holding the VIP membership.

4. The banquet room privilege available to social members consists of use of the banquet room. There is no charge if the banquet room is used on a day that the club is open. Should a member desire to use the banquet room on a day when the club is closed, the member is charged \$300. This privilege is not available to persons holding the VIP membership.

5. Members are limited to the areas permitted by their respective memberships. Thus, a person holding a social membership may not access the golf course or other facilities of the club other than the facilities available to a person holding a social membership (the dining, banquet and VIP rooms).

6. Each member is sent a monthly bill for the charges incurred in the club's facilities, taking into account the dining room minimum for the type of membership. Thus, for example, if a person holding a social membership has incurred charges of less than \$30, he or she is sent a bill for \$30.

#### ANALYSIS

Public officials who are listed in Section 87200 or who are designated in a state or local government agency's conflict-of-interest code must file annual statements of economic interests. (Sections 87200-87313.) If a public official is listed in Section 87200, or if required by his or her agency's conflict-of-interest code, the official must disclose income and gifts on his or her statement of economic interests.

Section 86116 details the information a lobbyist employer must include in his quarterly report. Subdivision (f) of Section 86116 requires disclosure of each activity expense of the filer including any gifts to public officials.

Since Huntington Beach, a lobbyist employer, distributed VIP memberships to various public officials, the value of these gifts must be disclosed by Huntington Beach, by the public officials listed in Section 87200, or as required in the official's agency's conflict-of-interest code.

The general rule is that gifts are to be valued at fair market value. (Section 82025.5.) Regulation 18726(b) (copy enclosed) further provides:

(b) General Rule for Valuation of Unique Gifts. Whenever the fair market value cannot readily be ascertained because the gift is unique or unusual, the value shall be the cost to the donor, if known or ascertainable; if the cost to the donor is unknown and unascertainable, then the recipient shall make a reasonable approximation. In making such an approximation the price of similar items should be taken into account. If similar items are not available as a guide, a good faith estimate shall be utilized. Gifts must be valued for purposes of disclosure and disqualification even if unused, discarded or given to some other person, except as provided for in subsection (b) of Section 18726.1.

Regulation 18726(b).

1. Valuation of the VIP membership for purposes of disclosure.

Regulation 18726.3 (copy enclosed) provides more specific guidance for valuing gift passes to facilities such as country clubs. For purposes of disclosure, the value shall be the fair market value of the actual use of the pass by the official, plus the fair market value of any possible use by any person or person to whom the official transfers the privilege of use of the pass. (Regulation 18726.3(a).)

The thrust of Regulation 18726.3 is to value the benefit received by a public official. By measuring the value of the pass based on actual use, the pass is valued by measuring the benefit derived by the public official from its use.

In determining fair market value, it is reasonable to look at the value of comparable services available to the public without regard to official status. You have used the value of the social membership, discounted because of the limitations on the VIP memberships, as a reasonable approximation. We agree with your evaluation regarding the value of the initiation and annual fees. However, because of the confusion engendered by the use of the monthly minimum charge, in that a person who does not use it at all would appear to derive a greater benefit than a frequent user since the frequent user would receive goods (food and beverages) in return for the \$30/month, you have concluded that exemption from this minimum has no value. We disagree.

When a public official visits the club occasionally as a VIP member, but is exempt from the \$30 per month minimum dining room charges, the public official receives the benefit of retaining the membership for further use without incurring the minimum charges. Accordingly, if the public official does not visit the club in any particular month, he receives a discount to the extent he avoids the \$30 per month minimum which a person holding a social membership would be required to pay.

Therefore, for purposes of disclosure, the value of the VIP membership is the benefit received by the public official, i.e. the difference between actual use, if less than \$30, and \$30 for each month of the reporting period, plus \$105 for the initiation fee value or \$35 for the annual fee value, whichever would apply.<sup>3</sup> If the official incurred dining room charges of more than \$30 in any particular month, then for that month the public official does not receive any additional benefit compared to a person holding a

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<sup>3</sup> Our advice is based on the understanding that the recipient of the VIP membership card is the only person who will use the card. We assume that the public officials comply with that rule. If, in fact, an official has transferred the membership card to another, then the value of the card to the public official would increase by the benefit to the transferee.

social membership. To the extent that this results in a public official who rarely uses the club being deemed to have received a more valuable gift than one who frequents the club, it does accurately reflect the \$30 per month discount received by the public official in comparison to a person holding a social membership. We accept your assertion, however, that a public official who neither uses the VIP membership nor lends the card to another has not received a gift and is, therefore not required to disclose the membership on his or her statement of economic interests. (Regulation 18726.3(a).)

In summary, the value of the VIP membership is \$105 or \$35 (the initiation or annual fee equivalents) plus the difference between \$30 per month and the actual dining room charges for each month in which the actual charges are less than \$30. If the membership is unused during the entire calendar year, the value would be zero.

Section 86117 requires lobbyist employers to file periodic reports during the month following each calendar quarter. As noted above, Section 86116(f) requires disclosure of gifts to public officials. Huntington Beach may monitor a public official's use of the VIP membership, and report the value of the gift to the public official based on actual use, determined as described above. In the alternative, Huntington Beach could disclose the full value of the VIP membership when the gift is made. The value of the gift to the public official would be the value based on future use, determined as described below.

## 2. Valuation of the VIP Membership for purposes of disqualification.

For purposes of disqualification, the value of the pass is measured by determining the value of the pass based on actual use as discussed above, plus the fair market value of the maximum reasonable use following the date of the decision. (Regulation 18726.3(b).) This rule essentially measures the maximum reasonable benefit to be derived by the public official.

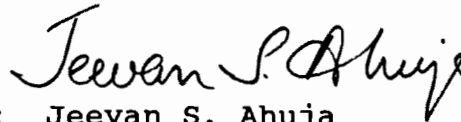
The benefit to the public official who is a VIP member is retaining the privilege to use the club if and when he or she desires. Accordingly, the value of the VIP membership for the future is the number of months that the membership is valid following the date of the decision, multiplied by the \$30 minimum monthly dining room charges assessed against a person holding a social membership. This is the amount that a person holding a social membership would pay if the person does not use the club but wants to retain the privilege of being able to use the club. Therefore, the value of the VIP membership for purposes of disqualification is the value based on the actual use during the past 12 months, determined as described above, plus \$30 per month for each of the months in the future that the membership is valid. However, if the official chooses to return the VIP membership card

prior to the decision, the value of the membership for purposes of disqualification is the value based on the actual use during the past 12 months, determined as described above. (Regulation 18726.3(b).)

I trust this letter adequately responds to your request for advice. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

A handwritten signature in cursive script that reads "Jeevan S. Ahuja".

By: Jeevan S. Ahuja  
Counsel, Legal Division

KED:JSA:aa

Enclosures

89-452



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TELEPHONE  
(714) 536-5555

July 21, 1989

Mr. John McLean, Esq.  
Legal Counsel  
Fair Political Practices Commission  
428 J Street  
Sacramento, California 95814

Dear Mr. McLean:

This is a request for formal written advice pursuant to Government Code Section 83114(b).

I am the City Attorney of the City of Huntington Beach, and I am requesting advice concerning the duties and obligations of the employees and officials of the City of Huntington Beach (the "city") under the Political Reform Act of 1974, as amended (the "Act"). The firm of Pillsbury, Madison & Sutro by Teresa Cragie, Esq. represents the Huntington Beach Company ("Huntington Beach Co.") and is also requesting advice concerning its client's duties under the Act. The Huntington Beach Co. joins in this request for advice.

The Seacliff Country Club (the "Club") is a golf, tennis, swimming, fitness and social club owned and operated by Huntington Beach Co. The Huntington Beach Co. distributed VIP Memberships to 153 business leaders, prominent citizens, first time home buyers, and realtors in order to promote the club and increase dining room usage. The recipients of these memberships include officials and employees of the city and other state and local officials ("public officials").

The VIP memberships entitle the holder to dining room privileges only; such members may not use any of the other club facilities. The VIP members pay for all food and beverages they order. VIP members are not required to pay any initiation or annual fees.<sup>1</sup>

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<sup>1</sup>However, at least one city official joined the Club prior to becoming an official, and paid the initiation fee.



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Each time a VIP member uses the Club's dining room facilities, he or she is charged the same amount, and is billed in the same manner as any other Club member. The use of the VIP membership by public officials varies. Some have never used the card, others routinely use the card and others use the card on an occasional basis.

The Club has ten different types of memberships, each of which has different privileges. The initiation fee and annual or monthly charges for a membership depend upon the type of membership. For example, an individual could join as a Social member. Such a member would pay a \$150 initiation fee, a \$50 annual renewal fee after the first year, and a \$30 per month dining room minimum. A golf membership would entitle an individual to golf, swimming, dining, banquet and VIP room privileges and would cost a \$20,000 initiation fee, a \$215 monthly fee, and an \$85 per month dining room minimum.<sup>2</sup> For a tennis membership, an individual would have to pay an \$800 initiation fee and a \$100 monthly tennis court charge. Tennis members are not charged a dining room minimum. A complete list of the various types of memberships, together with the privileges and fees for each membership, is attached hereto as Exhibit A.

For purposes of the financial disclosure provisions (Government Code §87300, et seq.) and the conflict of interest provisions (Government Code §87100) of the Act, it is our understanding that the value of a country club membership, such as the VIP membership to the Club, is based upon the number of times the membership privilege is used by the official or one of his or her guests (2 Cal.Code of Regs. §18726.3). Accordingly, we request that you confirm our conclusions regarding the valuation of the VIP Club membership<sup>3</sup> as follows:

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<sup>2</sup>Most, but not all, of the memberships have a dining room minimum. The member must pay the minimum regardless of whether he or she uses the dining room. A golf member, for example, must spend \$85 per month in the dining room. If he or she does not, he or she is charged \$85. On the other hand, if he or she charges \$85 or more in the dining room, he or she is billed for the actual dining room use.

<sup>3</sup>We have reviewed the issues and concluded that the VIP membership at issue is a gift of less than \$250, as more fully explained herein. Parenthetically, we note that disqualification

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1. A public official who neither uses his or her VIP membership nor lends the card to another to use during a calendar year is not required to disclose the membership on his or her Statement of Economic Interests because it has no value (2 Cal.Code of Regs. §18726.3(a)).

2. A public official who uses his or her VIP membership or lends his or her card to another is required to disclose the value of such use of the card on his or her Statement of Economic Interests (2 Cal.Code of Regs. §18726.3(a)). In this case, to the extent the VIP member "uses" the membership (i.e., he or she has a meal or a cocktail in the dining room), he or she is charged the same price, and is billed in the same manner, as any other Club member. Since the public official pays fair market value, a "use" of the dining room does not qualify as a gift and is not reportable (Government Code §82028). Nonetheless, since only Club members may "use" the Club's dining room, we assume that the "pass" has a nominal value. VIP members do not pay initiation or other fees; therefore, we have reviewed all of the various types of memberships (Exhibit A). The Social membership is similar, but not identical to the VIP membership. Such members must pay a \$150 initiation fee, a \$50 annual renewal fee, and are expected to charge a minimum of \$30 per month in the dining room and bar. A Social member has dining and banquet and VIP room privileges, but a VIP member has only dining privileges. Given the differences between these classes of memberships, it would appear that the VIP membership has a lesser value than the regular Social membership.<sup>4</sup> Accordingly, we conclude that a "reasonable approximation" (2 Cal.Code of Regs. §18726(b)) of the value of the Club "pass" in the first year is \$105, and in subsequent years the value is \$35.

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of an elected official is a drastic remedy which disenfranchises not only the official but his constituency. As a result, we tend to counsel disqualification only when it is clearly required by Government Code §87100 and relevant regulations.

<sup>4</sup>Although Social members are expected to spend \$30 per month in the dining room, persons in the VIP class of membership are not assessed a minimum. We have concluded that exemption from the minimum fee has no value because it has no relation to the privilege of using the dining room. Instead, the "minimum" is an attempt to encourage dining room use so that the Club will be able to pay the costs of running the dining room and attract other members. In this regard, use of the dining room by VIP members helps the Club defray dining room costs.

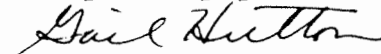
Mr. John McLean, Esq.  
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3. For purposes of disqualification under Government Code §87100, the value of a gift of a country club pass is based upon the actual "use" by the public official or his or her guests, together with the reasonable maximum use of the pass (2 Cal.Code of Regs. §18726.3(b)). As discussed above, to the extent a public official, or his or her guests, "uses" the Club dining facilities, he or she pays adequate consideration and, therefore, he or she receives no "gift" (Government Code §82028). Nonetheless, we assume that the pass may have some value to the public official during the 12 months preceding the date a governmental decision is made (Government Code §§87100, 87103(e)). As discussed in paragraph 2 above, we request you to confirm that the value of the pass would have a value of \$105 during the first year and \$35 in subsequent years.

4. For purposes of the lobbying disclosure provisions of the Act (Government Code §86100, et seq.), we conclude that the value of the pass received by any state office holder or candidate is \$105 during the first year and \$35 in subsequent years.

If you would like to discuss this matter further, please do not hesitate to contact me.

Very truly yours,



GAIL HUTTON  
City Attorney

Attachment: Exhibit A

cc: Ms. Kathryn Donovan, Esq., FPPC  
Teresa Cragie, Esq., Pillsbury, Madison & Sutro  
Elliot Block, Esq., FPPC

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In any case, it is impossible to place a value upon the exemption from the minimum. If we were to assume a value, persons who did not use the Club would be deemed to have received a more valuable gift than those who use the Club because persons who use the Club pay fair market value and receive no value from the exemption. This result would be inconsistent with the Commission's regulations, which value a club pass by the number of times used, and would be inconsistent with the definition of "gift" in §82028, which focuses on payments, rebates, and discounts received by an official.

EXHIBIT A

<u>Types of Membership</u>	<u>Number of Members</u>	<u>Initiation Fee</u>	<u>Annual Fee</u>	<u>Monthly Charge</u>	<u>Food/ Beverage Minimum</u>	<u>Privileges</u>
Regular Golf	460	\$20,000	0	215	85	Golf, Swimming, Dining, Banquet, VIP Rooms
Corporate Golf	30	25,000	0	215	85	Golf, Swimming, Dining, Banquet, VIP Rooms
Annual Golf	28	7,500	0	215	85	Golf, Swimming, Dining, Banquet, VIP Rooms
Golf/Tennis	5	20,000	0	300	85	Golf, Tennis, Swimming, Dining, Banquet, VIP Rooms
Golf/Fitness	5	20,000	0	232	85	Golf, Fitness, Swimming, Dining, Banquet, VIP Rooms
Regular Tennis	525	800	0	100 <sup>1</sup>	0	Tennis, Swimming, Dining, Banquet, VIP Rooms
Social	167	150	50 <sup>2</sup>	0	30	Dining, Banquet, VIP Rooms
Social/Fitness	15	150	50	17.50	30	Dining, Fitness, Banquet, VIP Rooms
Social/Swim	5	0 <sup>3</sup>	300 <sup>4</sup>	0	30	Dining, Swimming, Banquet, VIP Rooms
V.I.P.	153	0	0	0	0	Dining

1 Monthly fees: \$100--family; \$85--single individual.

2 Annual fees are payable each year following the initial year.

3 There is an annual fee, but no initiation fee.

4 Annual fees: \$300--family; \$175--single individual.

LAW OFFICES OF  
PILLSBURY, MADISON & SUTRO

## OTHER OFFICES

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July 26, 1989

HAND DELIVERED

Mr. John McLean  
Legal Counsel  
Fair Political Practices Commission  
428 J Street  
Sacramento, CA 95814

Dear Mr. McLean:

This is a request for formal written advice pursuant to Government Code Section 83114(b).

This firm represents the Huntington Beach Company ("Huntington Beach"), and is requesting advice concerning its duties under the Political Reform Act of 1974, as amended (the "Act"). The City Attorney of Huntington Beach is requesting advice concerning the duties and obligations of the employees and officials of the City of Huntington Beach (the "City") and, by separate letter, joins in this request for advice.

The Seacliff Country Club (the "Club") is a golf, tennis, swimming, fitness and social club owned and operated by Huntington Beach. Huntington Beach distributed "VIP Memberships" to 153 business leaders, prominent citizens and realtors in order to promote and increase Club dining room usage. The recipients of these memberships included officials and employees of the City and other state and local officials ("public officials").

The VIP memberships entitle the holders to dining room privileges only; such members may not use any of the other club facilities. VIP members are not required to pay

Mr. John McLean  
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any initiation or annual fees.<sup>1</sup> Each time a VIP member uses the Club's dining room facilities, he or she is charged the same amount, and is billed in the same manner as any other Club member. The use of the VIP membership by public officials varies. Some have never used the card, others routinely use the card and others use the card on an occasional basis.

The Club has ten different types of memberships, each of which has different privileges. The initiation fee and annual or monthly charges for a membership depend upon the type of membership. For example, an individual could join as a "social member." Such a member would pay a \$150 initiation fee, a \$50 annual fee, and a \$30 per month dining room minimum. A golf membership would entitle an individual to golf, swimming, dining, banquet and VIP room privileges and would cost a \$20,000 initiation fee, a \$215 monthly fee, and an \$85 per month dining room minimum.<sup>2</sup> For a tennis membership, an individual would have to pay an \$800 initiation fee and a \$100 monthly tennis court charge. Tennis members are not charged a dining room minimum. A complete list of the various types of memberships, together with the privileges and fees for each membership, is attached hereto as Exhibit A.

For purposes of the financial disclosure provisions (Gov't.Code § 87300, et seq.) and the conflict of interest provisions (Gov't.Code § 87100) of the Act it is our understanding that the value of a country club membership, such as the VIP membership to the Club, is based upon the number of times the membership privilege is used by the official or one of his or her guests (2 Cal.Code of Regs. § 18726.3). Accordingly, we request that you confirm our conclusions regarding the valuation of the VIP Club membership as follows:

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1     However, at least one City official joined the Club prior to becoming an official, and paid the initiation fee.

2     Most, but not all, of the memberships have a dining room minimum. The member must pay the minimum regardless of whether he or she uses the dining room. A golf member, for example, must spend \$85 per month in the dining room. If he or she does not, he or she is charged \$85. On the other hand, if he or she charges \$85 or more in the dining room, he or she is billed for the actual dining room use.

Mr. John McLean  
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Page 3

1. A public official who neither uses his or her VIP membership nor lends the card to another to use during a calendar year is not required to disclose the membership on his or her Statement of Economic Interests because it has no value (2 Cal.Code of Regs. § 18726.3(a)).

2. A public official who uses his or her VIP membership or lends his or her card to another is required to disclose the value of such use of the card on his or her Statement of Economic Interests (2 Cal.Code of Regs. § 18726.3(a)). In this case, to the extent the member "uses" the membership (i.e., he or she has a meal or a cocktail in the dining room), he or she is charged the same price, and is billed in the same manner, as any other Club member. Since the public official pays fair market value, a "use" of the dining room does not qualify as a gift and is not reportable (Gov't.Code § 82028). Nonetheless, since only Club members may "use" the Club's dining room, we assume that the "pass" has a nominal value. VIP members do not pay initiation or other fees; therefore, we have reviewed all of the various types of memberships (Exhibit A). The "social" membership is similar, but not identical to the VIP membership. Such members must pay a \$150 initiation fee, a \$50 annual fee and are expected to charge \$30 in the dining room. A social member has dining and banquet and VIP room privileges but a VIP member has only dining privileges. Given the differences between these memberships, it would appear that the VIP membership has a lesser value than the social membership.<sup>3</sup> Accordingly, we conclude that a "reasonable approximation" (2 Cal.Code of Regs. § 18726(b)) of the value

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3 Although social members are expected to spend \$30 per month in the dining room, persons in the VIP class of membership are not assessed a minimum. We have concluded that exemption from the minimum fee has no value because it has no relation to the privilege of using the dining room. Instead, the "minimum" is an attempt to encourage dining room use so that the Club will be able to pay the costs of running the dining room. In this regard, use of the dining room by VIP members also helps the Club defray dining room costs.

In any case, it is impossible to place a value upon the exemption from the minimum. If we were to assume a value, persons who did not use the Club would be deemed to have received a more valuable gift than those who use the Club because persons who use the Club pay fair market value and receive no value from the exemption. This result would be inconsistent with the Commission's regulations which value a club pass by the number of times used.

Mr. John McLean  
July 26, 1989  
Page 4

of the Club "pass", in the first year is \$105 and in subsequent years the value is \$35.

3. For purposes of disqualification under Government Code section 87100, the value of a gift of a country club pass is based upon the actual "use" by the public official or his or her guests, together with the reasonable maximum use of the pass (2 Cal.Code of Regs. § 18726.3(b)). As discussed above, to the extent a public official, or his or her guests, "uses" the Club dining facilities, he or she pays adequate consideration and, therefore, he or she receives no "gift" (Gov't.Code § 82028). Nonetheless, we assume that the pass may have some value to the public official during the 12 months preceding the date a governmental decision is made (Gov't.Code § 87100, 87103(e)). As discussed in paragraph 2 above, we request you to confirm that the value of the pass, would have a value of \$105 during the first year and \$35 in subsequent years.

4. For purposes of the lobbying disclosure provisions of the Act (Gov't.Code § 86100, et seq.), we conclude that the value of the pass received by any state office holder or candidate is \$105 during the first year and \$35 in subsequent years.

If you would like to discuss this matter further, please do not hesitate to contact the undersigned.

Very truly yours,



Teresa Craigie

cc: Kathryn Donovan, Esq.  
Gail Hutton, Esq.



EXHIBIT A

<u>Types of Membership</u>	<u>Number of Members</u>	<u>Initiation Fee</u>	<u>Annual Fee</u>	<u>Monthly Charge</u>	<u>Food/Beverage Minimum</u>	<u>Privileges</u>
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Annual Golf	28	7,500	0	215	85	Golf, Swimming, Dining, Banquet, VIP Rooms
Golf/Tennis	5	20,000	0	300	85	Golf, Tennis, Swimming, Dining, Banquet, VIP Rooms
Golf/Fitness	5	20,000	0	232	85	Golf, Fitness, Swimming, Dining, Banquet, VIP Rooms
Regular Tennis	525	800	0	100 <sup>1</sup>	0	Tennis, Swimming, Dining, Banquet, VIP Rooms
Social	167	150	50 <sup>2</sup>	0	30	Dining, Banquet, VIP Rooms
Social/Fitness	15	150	50	17.50	30	Dining, Fitness, Banquet, VIP Rooms
Social/Swim	5	0 <sup>3</sup>	300 <sup>4</sup>	0	30	Dining, Swimming, Banquet, VIP Rooms
V.I.P.	153	0	0	0	0	Dining

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1 Monthly fees: \$100--family; \$85--single individual.

2 Annual fees are payable each year following the initial year.

3 There is an annual fee, but no initiation fee.

4 Annual fees: \$300--family; \$175--single individual.



OFFICE OF  
**CITY ATTORNEY**  
 P. O. BOX 2740  
 2000 MAIN STREET  
 HUNTINGTON BEACH  
 CALIFORNIA 92647

FPPC  
 JUL 28 11 51 AM '89

**GAIL HUTTON**  
 City Attorney

TELEPHONE  
 (714) 536-5555

July 21, 1989

Mr. John McLean, Esq.  
 Legal Counsel  
 Fair Political Practices Commission  
 428 J Street  
 Sacramento, California 95814

Dear Mr. McLean:

This is a request for formal written advice pursuant to Government Code Section 83114(b).

I am the City Attorney of the City of Huntington Beach, and I am requesting advice concerning the duties and obligations of the employees and officials of the City of Huntington Beach (the "city") under the Political Reform Act of 1974, as amended (the "Act"). The firm of Pillsbury, Madison & Sutro by Teresa Cragie, Esq. represents the Huntington Beach Company ("Huntington Beach Co.") and is also requesting advice concerning its client's duties under the Act. The Huntington Beach Co. joins in this request for advice.

The Seacliff Country Club (the "Club") is a golf, tennis, swimming, fitness and social club owned and operated by Huntington Beach Co. The Huntington Beach Co. distributed VIP Memberships to 153 business leaders, prominent citizens, first time home buyers, and realtors in order to promote the club and increase dining room usage. The recipients of these memberships include officials and employees of the city and other state and local officials ("public officials").

The VIP memberships entitle the holder to dining room privileges only; such members may not use any of the other club facilities. The VIP members pay for all food and beverages they order. VIP members are not required to pay any initiation or annual fees.<sup>1</sup>

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<sup>1</sup>However, at least one city official joined the Club prior to becoming an official, and paid the initiation fee.

Mr. John McLean, Esq.  
July 21, 1989  
Page 2

Each time a VIP member uses the Club's dining room facilities, he or she is charged the same amount, and is billed in the same manner as any other Club member. The use of the VIP membership by public officials varies. Some have never used the card, others routinely use the card and others use the card on an occasional basis.

The Club has ten different types of memberships, each of which has different privileges. The initiation fee and annual or monthly charges for a membership depend upon the type of membership. For example, an individual could join as a Social member. Such a member would pay a \$150 initiation fee, a \$50 annual renewal fee after the first year, and a \$30 per month dining room minimum. A golf membership would entitle an individual to golf, swimming, dining, banquet and VIP room privileges and would cost a \$20,000 initiation fee, a \$215 monthly fee, and an \$85 per month dining room minimum.<sup>2</sup> For a tennis membership, an individual would have to pay an \$800 initiation fee and a \$100 monthly tennis court charge. Tennis members are not charged a dining room minimum. A complete list of the various types of memberships, together with the privileges and fees for each membership, is attached hereto as Exhibit A.

For purposes of the financial disclosure provisions (Government Code §87300, et seq.) and the conflict of interest provisions (Government Code §87100) of the Act, it is our understanding that the value of a country club membership, such as the VIP membership to the Club, is based upon the number of times the membership privilege is used by the official or one of his or her guests (2 Cal.Code of Regs. §18726.3). Accordingly, we request that you confirm our conclusions regarding the valuation of the VIP Club membership<sup>3</sup> as follows:

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<sup>2</sup>Most, but not all, of the memberships have a dining room minimum. The member must pay the minimum regardless of whether he or she uses the dining room. A golf member, for example, must spend \$85 per month in the dining room. If he or she does not, he or she is charged \$85. On the other hand, if he or she charges \$85 or more in the dining room, he or she is billed for the actual dining room use.

<sup>3</sup>We have reviewed the issues and concluded that the VIP membership at issue is a gift of less than \$250, as more fully explained herein. Parenthetically, we note that disqualification

Mr. John McLean, Esq.  
July 21, 1989  
Page 3

1. A public official who neither uses his or her VIP membership nor lends the card to another to use during a calendar year is not required to disclose the membership on his or her Statement of Economic Interests because it has no value (2 Cal.Code of Regs. §18726.3(a)).

2. A public official who uses his or her VIP membership or lends his or her card to another is required to disclose the value of such use of the card on his or her Statement of Economic Interests (2 Cal.Code of Regs. §18726.3(a)). In this case, to the extent the VIP member "uses" the membership (i.e., he or she has a meal or a cocktail in the dining room), he or she is charged the same price, and is billed in the same manner, as any other Club member. Since the public official pays fair market value, a "use" of the dining room does not qualify as a gift and is not reportable (Government Code §82028). Nonetheless, since only Club members may "use" the Club's dining room, we assume that the "pass" has a nominal value. VIP members do not pay initiation or other fees; therefore, we have reviewed all of the various types of memberships (Exhibit A). The Social membership is similar, but not identical to the VIP membership. Such members must pay a \$150 initiation fee, a \$50 annual renewal fee, and are expected to charge a minimum of \$30 per month in the dining room and bar. A Social member has dining and banquet and VIP room privileges, but a VIP member has only dining privileges. Given the differences between these classes of memberships, it would appear that the VIP membership has a lesser value than the regular Social membership.<sup>4</sup> Accordingly, we conclude that a "reasonable approximation" (2 Cal.Code of Regs. §18726(b)) of the value of the Club "pass" in the first year is \$105, and in subsequent years the value is \$35.

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of an elected official is a drastic remedy which disenfranchises not only the official but his constituency. As a result, we tend to counsel disqualification only when it is clearly required by Government Code §87100 and relevant regulations.

<sup>4</sup>Although Social members are expected to spend \$30 per month in the dining room, persons in the VIP class of membership are not assessed a minimum. We have concluded that exemption from the minimum fee has no value because it has no relation to the privilege of using the dining room. Instead, the "minimum" is an attempt to encourage dining room use so that the Club will be able to pay the costs of running the dining room and attract other members. In this regard, use of the dining room by VIP members helps the Club defray dining room costs.

Mr. John McLean, Esq.  
July 21, 1989  
Page 4

3. For purposes of disqualification under Government Code §87100, the value of a gift of a country club pass is based upon the actual "use" by the public official or his or her guests, together with the reasonable maximum use of the pass (2 Cal.Code of Regs. §18726.3(b)). As discussed above, to the extent a public official, or his or her guests, "uses" the Club dining facilities, he or she pays adequate consideration and, therefore, he or she receives no "gift" (Government Code §82028). Nonetheless, we assume that the pass may have some value to the public official during the 12 months preceding the date a governmental decision is made (Government Code §§87100, 87103(e)). As discussed in paragraph 2 above, we request you to confirm that the value of the pass would have a value of \$105 during the first year and \$35 in subsequent years.

4. For purposes of the lobbying disclosure provisions of the Act (Government Code §86100, et seq.), we conclude that the value of the pass received by any state office holder or candidate is \$105 during the first year and \$35 in subsequent years.

If you would like to discuss this matter further, please do not hesitate to contact me.

Very truly yours,



GAIL HUTTON  
City Attorney

Attachment: Exhibit A

cc: Ms. Kathryn Donovan, Esq., FPPC  
Teresa Cragie, Esq., Pillsbury, Madison & Sutro  
Elliot Block, Esq., FPPC

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In any case, it is impossible to place a value upon the exemption from the minimum. If we were to assume a value, persons who did not use the Club would be deemed to have received a more valuable gift than those who use the Club because persons who use the Club pay fair market value and receive no value from the exemption. This result would be inconsistent with the Commission's regulations, which value a club pass by the number of times used, and would be inconsistent with the definition of "gift" in §82028, which focuses on payments, rebates, and discounts received by an official.

EXHIBIT A

<u>Types of Membership</u>	<u>Number of Members</u>	<u>Initiation Fee</u>	<u>Annual Fee</u>	<u>Monthly Charge</u>	<u>Food/Beverage Minimum</u>	<u>Privileges</u>
Regular Golf	460	\$20,000	0	215	85	Golf, Swimming, Dining, Banquet, VIP Rooms
Corporate Golf	30	25,000	0	215	85	Golf, Swimming, Dining, Banquet, VIP Rooms
Annual Golf	28	7,500	0	215	85	Golf, Swimming, Dining, Banquet, VIP Rooms
Golf/Tennis	5	20,000	0	300	85	Golf, Tennis, Swimming, Dining, Banquet, VIP Rooms
Golf/Fitness	5	20,000	0	232	85	Golf, Fitness, Swimming, Dining, Banquet, VIP Rooms
Regular Tennis	525	800	0	100 <sup>1</sup>	0	Tennis, Swimming, Dining, Banquet, VIP Rooms
Social	167	150	50 <sup>2</sup>	0	30	Dining, Banquet, VIP Rooms
Social/Fitness	15	150	50	17.50	30	Dining, Fitness, Banquet, VIP Rooms
Social/Swim	5	0 <sup>3</sup>	300 <sup>4</sup>	0	30	Dining, Swimming, Banquet, VIP Rooms
V.I.P.	153	0	0	0	0	Dining

1 Monthly fees: \$100--family; \$85--single individual.

2 Annual fees are payable each year following the initial year.

3 There is an annual fee, but no initiation fee.

4 Annual fees: \$300--family; \$175--single individual.



# California Fair Political Practices Commission

August 3, 1989

Gail Hutton  
City Attorney  
P.O. Box 2740  
Huntington Beach, CA 92647

Re: Letter No. 89-452

Dear Ms. Hutton:

Your letter requesting advice under the Political Reform Act was received on July 28, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan Ahuja an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan  
General Counsel

KED:plh



# California Fair Political Practices Commission

October 4, 1989

Teresa Craigie  
Pillsbury, Madison and Sutro  
P. O. Box 7880  
San Francisco, CA 94120

Gail Hutton  
City Attorney  
P. O. Box 2740  
Huntington Beach, CA 92647

Re: Your Requests for Advice  
Our File Nos. A-89-441 and A-89-452

Dear Ms. Craigie and Ms. Hutton:

This is in response to your requests for advice concerning the duties and obligations of your respective clients, Huntington Beach Company, and the employees and officials of the City of Huntington Beach under the Political Reform Act (the "Act").<sup>1</sup> Because your requests for advice are based on the same set of facts we have elected to respond to both requests in one advice letter.

## QUESTIONS

How should a VIP membership, a gift pass to the Seacliff Country Club (the "club"), given to certain public officials be valued:

1. For purposes of disclosure including disclosure pursuant to the lobbying provisions of the Act.
2. For purposes of disqualification.

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.



### CONCLUSIONS

1. Based on the facts provided, the value of the VIP membership for purposes of disclosure is the initiation and annual fees, whichever is applicable, plus the difference between the actual costs incurred by the public official if less than \$30 and the \$30 minimum monthly dining room fee, for each month of the reporting period. However, an official who receives a VIP membership but does not use it, nor transfers it to someone else, is not required to disclose receipt of the membership.

2. The value of the VIP membership for purposes of disqualification is the value based on the actual use, determined as described above, plus \$30 per month for each of the months in the future that the membership is valid. If the official returns the VIP membership card prior to the decision, the value of the VIP membership for purposes of disqualification is the value based on actual use during the past 12 months, determined as described above.

### FACTS

The Seacliff Country Club (the "Club") is a golf, tennis, swimming, fitness and social club owned and operated by Huntington Beach Company ("Huntington Beach"), a lobbyist employer. Huntington Beach distributed "VIP Memberships" to 153 business leaders, prominent citizens and realtors. You have indicated that this was done in order to promote and increase Club dining room usage. The recipients of these memberships included officials and employees of the City of Huntington Beach (the "city") and other state and local officials ("public officials").

The VIP memberships entitle the holders to dining room privileges only; such members may not use any of the other club facilities. VIP members are not required to pay any initiation or annual fees. Each time a VIP member uses the Club's dining room facilities, he or she is charged the same amount, and is billed in the same manner as any other Club member. No minimum monthly dining room charge applies. The use of the VIP membership by public officials varies. Some have never used the card, others routinely use the card and others use the card on an occasional basis.

The Club has ten different types of memberships, each of which has different privileges. The initiation fee and annual or monthly charges for a membership depend upon the type of membership.<sup>2</sup> For example, an individual could join as a "social member." Such a member would pay a \$150 initiation fee, a \$50

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<sup>2</sup> You have provided us with a chart describing the various types of memberships available at the club and the fees paid for those memberships. A copy of the chart is attached for ease of reference.

annual fee, and a \$30 per month dining room minimum. A golf membership would entitle an individual to golf, swimming, dining, banquet and VIP room privileges and would cost a \$20,000 initiation fee, a \$215 monthly fee, and an \$85 per month dining room minimum. For a tennis membership, an individual would have to pay an \$800 initiation fee and a \$100 monthly tennis court charge. Tennis members are not charged a dining room minimum.

Most, but not all, of the memberships have a dining room minimum. The member must pay the minimum regardless of whether he or she uses the dining room. A golf member, for example, must spend \$85 per month in the dining room. If he or she does not, he or she is charged \$85. On the other hand, if he or she charges \$85 or more in the dining room, he or she is billed for the actual dining room use.

In a telephone conversation on August 25th, you provided the following additional information:

1. All members are issued cards with the member's name on the card. The card is renewed annually.

2. Although technically only the person whose name is on the card may use the card, somebody else could use the card since the dining room staff would not question if someone other than the member were using the membership card.

3. The dining room consists of a lounge area and the dining room. The lounge has tables which may be used by card players. However, the club has cardrooms available to the members. These cardrooms are not available to persons holding the VIP membership.

4. The banquet room privilege available to social members consists of use of the banquet room. There is no charge if the banquet room is used on a day that the club is open. Should a member desire to use the banquet room on a day when the club is closed, the member is charged \$300. This privilege is not available to persons holding the VIP membership.

5. Members are limited to the areas permitted by their respective memberships. Thus, a person holding a social membership may not access the golf course or other facilities of the club other than the facilities available to a person holding a social membership (the dining, banquet and VIP rooms).

6. Each member is sent a monthly bill for the charges incurred in the club's facilities, taking into account the dining room minimum for the type of membership. Thus, for example, if a person holding a social membership has incurred charges of less than \$30, he or she is sent a bill for \$30.

#### ANALYSIS

Public officials who are listed in Section 87200 or who are designated in a state or local government agency's conflict-of-interest code must file annual statements of economic interests. (Sections 87200-87313.) If a public official is listed in Section 87200, or if required by his or her agency's conflict-of-interest code, the official must disclose income and gifts on his or her statement of economic interests.

Section 86116 details the information a lobbyist employer must include in his quarterly report. Subdivision (f) of Section 86116 requires disclosure of each activity expense of the filer including any gifts to public officials.

Since Huntington Beach, a lobbyist employer, distributed VIP memberships to various public officials, the value of these gifts must be disclosed by Huntington Beach, by the public officials listed in Section 87200, or as required in the official's agency's conflict-of-interest code.

The general rule is that gifts are to be valued at fair market value. (Section 82025.5.) Regulation 18726(b) (copy enclosed) further provides:

(b) General Rule for Valuation of Unique Gifts. Whenever the fair market value cannot readily be ascertained because the gift is unique or unusual, the value shall be the cost to the donor, if known or ascertainable; if the cost to the donor is unknown and unascertainable, then the recipient shall make a reasonable approximation. In making such an approximation the price of similar items should be taken into account. If similar items are not available as a guide, a good faith estimate shall be utilized. Gifts must be valued for purposes of disclosure and disqualification even if unused, discarded or given to some other person, except as provided for in subsection (b) of Section 18726.1.

Regulation 18726(b).

1. Valuation of the VIP membership for purposes of disclosure.

Regulation 18726.3 (copy enclosed) provides more specific guidance for valuing gift passes to facilities such as country clubs. For purposes of disclosure, the value shall be the fair market value of the actual use of the pass by the official, plus the fair market value of any possible use by any person or person to whom the official transfers the privilege of use of the pass. (Regulation 18726.3(a).)

The thrust of Regulation 18726.3 is to value the benefit received by a public official. By measuring the value of the pass based on actual use, the pass is valued by measuring the benefit derived by the public official from its use.

In determining fair market value, it is reasonable to look at the value of comparable services available to the public without regard to official status. You have used the value of the social membership, discounted because of the limitations on the VIP memberships, as a reasonable approximation. We agree with your evaluation regarding the value of the initiation and annual fees. However, because of the confusion engendered by the use of the monthly minimum charge, in that a person who does not use it at all would appear to derive a greater benefit than a frequent user since the frequent user would receive goods (food and beverages) in return for the \$30/month, you have concluded that exemption from this minimum has no value. We disagree.

When a public official visits the club occasionally as a VIP member, but is exempt from the \$30 per month minimum dining room charges, the public official receives the benefit of retaining the membership for further use without incurring the minimum charges. Accordingly, if the public official does not visit the club in any particular month, he receives a discount to the extent he avoids the \$30 per month minimum which a person holding a social membership would be required to pay.

Therefore, for purposes of disclosure, the value of the VIP membership is the benefit received by the public official, i.e. the difference between actual use, if less than \$30, and \$30 for each month of the reporting period, plus \$105 for the initiation fee value or \$35 for the annual fee value, whichever would apply.<sup>3</sup> If the official incurred dining room charges of more than \$30 in any particular month, then for that month the public official does not receive any additional benefit compared to a person holding a

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<sup>3</sup> Our advice is based on the understanding that the recipient of the VIP membership card is the only person who will use the card. We assume that the public officials comply with that rule. If, in fact, an official has transferred the membership card to another, then the value of the card to the public official would increase by the benefit to the transferee.

social membership. To the extent that this results in a public official who rarely uses the club being deemed to have received a more valuable gift than one who frequents the club, it does accurately reflect the \$30 per month discount received by the public official in comparison to a person holding a social membership. We accept your assertion, however, that a public official who neither uses the VIP membership nor lends the card to another has not received a gift and is, therefore not required to disclose the membership on his or her statement of economic interests. (Regulation 18726.3(a).)

In summary, the value of the VIP membership is \$105 or \$35 (the initiation or annual fee equivalents) plus the difference between \$30 per month and the actual dining room charges for each month in which the actual charges are less than \$30. If the membership is unused during the entire calendar year, the value would be zero.

Section 86117 requires lobbyist employers to file periodic reports during the month following each calendar quarter. As noted above, Section 86116(f) requires disclosure of gifts to public officials. Huntington Beach may monitor a public official's use of the VIP membership, and report the value of the gift to the public official based on actual use, determined as described above. In the alternative, Huntington Beach could disclose the full value of the VIP membership when the gift is made. The value of the gift to the public official would be the value based on future use, determined as described below.

## 2. Valuation of the VIP Membership for purposes of disqualification.

For purposes of disqualification, the value of the pass is measured by determining the value of the pass based on actual use as discussed above, plus the fair market value of the maximum reasonable use following the date of the decision. (Regulation 18726.3(b).) This rule essentially measures the maximum reasonable benefit to be derived by the public official.

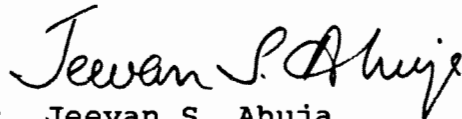
The benefit to the public official who is a VIP member is retaining the privilege to use the club if and when he or she desires. Accordingly, the value of the VIP membership for the future is the number of months that the membership is valid following the date of the decision, multiplied by the \$30 minimum monthly dining room charges assessed against a person holding a social membership. This is the amount that a person holding a social membership would pay if the person does not use the club but wants to retain the privilege of being able to use the club. Therefore, the value of the VIP membership for purposes of disqualification is the value based on the actual use during the past 12 months, determined as described above, plus \$30 per month for each of the months in the future that the membership is valid. However, if the official chooses to return the VIP membership card

prior to the decision, the value of the membership for purposes of disqualification is the value based on the actual use during the past 12 months, determined as described above. (Regulation 18726.3(b).)

I trust this letter adequately responds to your request for advice. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

A handwritten signature in black ink, reading "Jeevan S. Ahuja". The signature is written in a cursive style with a large, stylized 'J' and 'A'.

By: Jeevan S. Ahuja  
Counsel, Legal Division

KED:JSA:aa

Enclosures

LAW OFFICES OF  
PILLSBURY, MADISON & SUTRO

OTHER OFFICES  
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WRITER'S OFFICE AND  
DIRECT DIAL NUMBER

235 Montgomery Street  
(415) 983-1968

July 26, 1989

HAND DELIVERED

Mr. John McLean  
Legal Counsel  
Fair Political Practices Commission  
428 J Street  
Sacramento, CA 95814

Dear Mr. McLean:

This is a request for formal written advice pursuant to Government Code Section 83114(b).

This firm represents the Huntington Beach Company ("Huntington Beach"), and is requesting advice concerning its duties under the Political Reform Act of 1974, as amended (the "Act"). The City Attorney of Huntington Beach is requesting advice concerning the duties and obligations of the employees and officials of the City of Huntington Beach (the "City") and, by separate letter, joins in this request for advice.

The Seacliff Country Club (the "Club") is a golf, tennis, swimming, fitness and social club owned and operated by Huntington Beach. Huntington Beach distributed "VIP Memberships" to 153 business leaders, prominent citizens and realtors in order to promote and increase Club dining room usage. The recipients of these memberships included officials and employees of the City and other state and local officials ("public officials").

The VIP memberships entitle the holders to dining room privileges only; such members may not use any of the other club facilities. VIP members are not required to pay

Mr. John McLean  
July 26, 1989  
Page 2

any initiation or annual fees.<sup>1</sup> Each time a VIP member uses the Club's dining room facilities, he or she is charged the same amount, and is billed in the same manner as any other Club member. The use of the VIP membership by public officials varies. Some have never used the card, others routinely use the card and others use the card on an occasional basis.

The Club has ten different types of memberships, each of which has different privileges. The initiation fee and annual or monthly charges for a membership depend upon the type of membership. For example, an individual could join as a "social member." Such a member would pay a \$150 initiation fee, a \$50 annual fee, and a \$30 per month dining room minimum. A golf membership would entitle an individual to golf, swimming, dining, banquet and VIP room privileges and would cost a \$20,000 initiation fee, a \$215 monthly fee, and an \$85 per month dining room minimum.<sup>2</sup> For a tennis membership, an individual would have to pay an \$800 initiation fee and a \$100 monthly tennis court charge. Tennis members are not charged a dining room minimum. A complete list of the various types of memberships, together with the privileges and fees for each membership, is attached hereto as Exhibit A.

For purposes of the financial disclosure provisions (Gov't.Code § 87300, et seq.) and the conflict of interest provisions (Gov't.Code § 87100) of the Act it is our understanding that the value of a country club membership, such as the VIP membership to the Club, is based upon the number of times the membership privilege is used by the official or one of his or her guests (2 Cal.Code of Regs. § 18726.3). Accordingly, we request that you confirm our conclusions regarding the valuation of the VIP Club membership as follows:

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1 However, at least one City official joined the Club prior to becoming an official, and paid the initiation fee.

2 Most, but not all, of the memberships have a dining room minimum. The member must pay the minimum regardless of whether he or she uses the dining room. A golf member, for example, must spend \$85 per month in the dining room. If he or she does not, he or she is charged \$85. On the other hand, if he or she charges \$85 or more in the dining room, he or she is billed for the actual dining room use.



1. A public official who neither uses his or her VIP membership nor lends the card to another to use during a calendar year is not required to disclose the membership on his or her Statement of Economic Interests because it has no value (2 Cal.Code of Regs. § 18726.3(a)).

2. A public official who uses his or her VIP membership or lends his or her card to another is required to disclose the value of such use of the card on his or her Statement of Economic Interests (2 Cal.Code of Regs. § 18726.3(a)). In this case, to the extent the member "uses" the membership (i.e., he or she has a meal or a cocktail in the dining room), he or she is charged the same price, and is billed in the same manner, as any other Club member. Since the public official pays fair market value, a "use" of the dining room does not qualify as a gift and is not reportable (Gov't.Code § 82028). Nonetheless, since only Club members may "use" the Club's dining room, we assume that the "pass" has a nominal value. VIP members do not pay initiation or other fees; therefore, we have reviewed all of the various types of memberships (Exhibit A). The "social" membership is similar, but not identical to the VIP membership. Such members must pay a \$150 initiation fee, a \$50 annual fee and are expected to charge \$30 in the dining room. A social member has dining and banquet and VIP room privileges but a VIP member has only dining privileges. Given the differences between these memberships, it would appear that the VIP membership has a lesser value than the social membership.<sup>3</sup> Accordingly, we conclude that a "reasonable approximation" (2 Cal.Code of Regs. § 18726(b)) of the value

---

3 Although social members are expected to spend \$30 per month in the dining room, persons in the VIP class of membership are not assessed a minimum. We have concluded that exemption from the minimum fee has no value because it has no relation to the privilege of using the dining room. Instead, the "minimum" is an attempt to encourage dining room use so that the Club will be able to pay the costs of running the dining room. In this regard, use of the dining room by VIP members also helps the Club defray dining room costs.

In any case, it is impossible to place a value upon the exemption from the minimum. If we were to assume a value, persons who did not use the Club would be deemed to have received a more valuable gift than those who use the Club because persons who use the Club pay fair market value and receive no value from the exemption. This result would be inconsistent with the Commission's regulations which value a club pass by the number of times used.

Mr. John McLean  
July 26, 1989  
Page 4

of the Club "pass", in the first year is \$105 and in subsequent years the value is \$35.

3. For purposes of disqualification under Government Code section 87100, the value of a gift of a country club pass is based upon the actual "use" by the public official or his or her guests, together with the reasonable maximum use of the pass (2 Cal.Code of Regs. § 18726.3(b)). As discussed above, to the extent a public official, or his or her guests, "uses" the Club dining facilities, he or she pays adequate consideration and, therefore, he or she receives no "gift" (Gov't.Code § 82028). Nonetheless, we assume that the pass may have some value to the public official during the 12 months preceding the date a governmental decision is made (Gov't.Code § 87100, 87103(e)). As discussed in paragraph 2 above, we request you to confirm that the value of the pass, would have a value of \$105 during the first year and \$35 in subsequent years.

4. For purposes of the lobbying disclosure provisions of the Act (Gov't.Code § 86100, et seq.), we conclude that the value of the pass received by any state office holder or candidate is \$105 during the first year and \$35 in subsequent years.

If you would like to discuss this matter further, please do not hesitate to contact the undersigned.

Very truly yours,



Teresa Craigie

cc: Kathryn Donovan, Esq.  
Gail Hutton, Esq.

EXHIBIT A

<u>Types of Membership</u>	<u>Number of Members</u>	<u>Initiation Fee</u>	<u>Annual Fee</u>	<u>Monthly Charge</u>	<u>Food/ Beverage Minimum</u>	<u>Privileges</u>
Regular Golf	460	\$20,000	0	215	85	Golf, Swimming, Dining, Banquet, VIP Rooms
Corporate Golf	30	25,000	0	215	85	Golf, Swimming, Dining, Banquet, VIP Rooms
Annual Golf	28	7,500	0	215	85	Golf, Swimming, Dining, Banquet, VIP Rooms
Golf/Tennis	5	20,000	0	300	85	Golf, Tennis, Swimming, Dining, Banquet, VIP Rooms
Golf/Fitness	5	20,000	0	232	85	Golf, Fitness, Swimming, Dining, Banquet, VIP Rooms
Regular Tennis	525	800	0	100 <sup>1</sup>	0	Tennis, Swimming, Dining, Banquet, VIP Rooms
Social	167	150	50 <sup>2</sup>	0	30	Dining, Banquet, VIP Rooms
Social/Fitness	15	150	50	17.50	30	Dining, Fitness, Banquet, VIP Rooms
Social/Swim	5	0 <sup>3</sup>	300 <sup>4</sup>	0	30	Dining, Swimming, Banquet, VIP Rooms
V.I.P.	153	0	0	0	0	Dining

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1 Monthly fees: \$100--family; \$85--single individual.

2 Annual fees are payable each year following the initial year.

3 There is an annual fee, but no initiation fee.

4 Annual fees: \$300--family; \$175--single individual.



GAIL HUTTON  
City Attorney

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July 21, 1989

Mr. John McLean, Esq.  
Legal Counsel  
Fair Political Practices Commission  
428 J Street  
Sacramento, California 95814

Dear Mr. McLean:

This is a request for formal written advice pursuant to Government Code Section 83114(b).

I am the City Attorney of the City of Huntington Beach, and I am requesting advice concerning the duties and obligations of the employees and officials of the City of Huntington Beach (the "city") under the Political Reform Act of 1974, as amended (the "Act"). The firm of Pillsbury, Madison & Sutro by Teresa Cragie, Esq. represents the Huntington Beach Company ("Huntington Beach Co.") and is also requesting advice concerning its client's duties under the Act. The Huntington Beach Co. joins in this request for advice.

The Seacliff Country Club (the "Club") is a golf, tennis, swimming, fitness and social club owned and operated by Huntington Beach Co. The Huntington Beach Co. distributed VIP Memberships to 153 business leaders, prominent citizens, first time home buyers, and realtors in order to promote the club and increase dining room usage. The recipients of these memberships include officials and employees of the city and other state and local officials ("public officials").

The VIP memberships entitle the holder to dining room privileges only; such members may not use any of the other club facilities. The VIP members pay for all food and beverages they order. VIP members are not required to pay any initiation or annual fees.<sup>1</sup>

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<sup>1</sup>However, at least one city official joined the Club prior to becoming an official, and paid the initiation fee.

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Each time a VIP member uses the Club's dining room facilities, he or she is charged the same amount, and is billed in the same manner as any other Club member. The use of the VIP membership by public officials varies. Some have never used the card, others routinely use the card and others use the card on an occasional basis.

The Club has ten different types of memberships, each of which has different privileges. The initiation fee and annual or monthly charges for a membership depend upon the type of membership. For example, an individual could join as a Social member. Such a member would pay a \$150 initiation fee, a \$50 annual renewal fee after the first year, and a \$30 per month dining room minimum. A golf membership would entitle an individual to golf, swimming, dining, banquet and VIP room privileges and would cost a \$20,000 initiation fee, a \$215 monthly fee, and an \$85 per month dining room minimum.<sup>2</sup> For a tennis membership, an individual would have to pay an \$800 initiation fee and a \$100 monthly tennis court charge. Tennis members are not charged a dining room minimum. A complete list of the various types of memberships, together with the privileges and fees for each membership, is attached hereto as Exhibit A.

For purposes of the financial disclosure provisions (Government Code §87300, et seq.) and the conflict of interest provisions (Government Code §87100) of the Act, it is our understanding that the value of a country club membership, such as the VIP membership to the Club, is based upon the number of times the membership privilege is used by the official or one of his or her guests (2 Cal.Code of Regs. §18726.3). Accordingly, we request that you confirm our conclusions regarding the valuation of the VIP Club membership<sup>3</sup> as follows:

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<sup>2</sup>Most, but not all, of the memberships have a dining room minimum. The member must pay the minimum regardless of whether he or she uses the dining room. A golf member, for example, must spend \$85 per month in the dining room. If he or she does not, he or she is charged \$85. On the other hand, if he or she charges \$85 or more in the dining room, he or she is billed for the actual dining room use.

<sup>3</sup>We have reviewed the issues and concluded that the VIP membership at issue is a gift of less than \$250, as more fully explained herein. Parenthetically, we note that disqualification

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1. A public official who neither uses his or her VIP membership nor lends the card to another to use during a calendar year is not required to disclose the membership on his or her Statement of Economic Interests because it has no value (2 Cal.Code of Regs. §18726.3(a)).

2. A public official who uses his or her VIP membership or lends his or her card to another is required to disclose the value of such use of the card on his or her Statement of Economic Interests (2 Cal.Code of Regs. §18726.3(a)). In this case, to the extent the VIP member "uses" the membership (i.e., he or she has a meal or a cocktail in the dining room), he or she is charged the same price, and is billed in the same manner, as any other Club member. Since the public official pays fair market value, a "use" of the dining room does not qualify as a gift and is not reportable (Government Code §82028). Nonetheless, since only Club members may "use" the Club's dining room, we assume that the "pass" has a nominal value. VIP members do not pay initiation or other fees; therefore, we have reviewed all of the various types of memberships (Exhibit A). The Social membership is similar, but not identical to the VIP membership. Such members must pay a \$150 initiation fee, a \$50 annual renewal fee, and are expected to charge a minimum of \$30 per month in the dining room and bar. A Social member has dining and banquet and VIP room privileges, but a VIP member has only dining privileges. Given the differences between these classes of memberships, it would appear that the VIP membership has a lesser value than the regular Social membership.<sup>4</sup> Accordingly, we conclude that a "reasonable approximation" (2 Cal.Code of Regs. §18726(b)) of the value of the Club "pass" in the first year is \$105, and in subsequent years the value is \$35.

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of an elected official is a drastic remedy which disenfranchises not only the official but his constituency. As a result, we tend to counsel disqualification only when it is clearly required by Government Code §87100 and relevant regulations.

<sup>4</sup>Although Social members are expected to spend \$30 per month in the dining room, persons in the VIP class of membership are not assessed a minimum. We have concluded that exemption from the minimum fee has no value because it has no relation to the privilege of using the dining room. Instead, the "minimum" is an attempt to encourage dining room use so that the Club will be able to pay the costs of running the dining room and attract other members. In this regard, use of the dining room by VIP members helps the Club defray dining room costs.

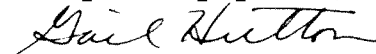
Mr. John McLean, Esq.  
July 21, 1989  
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Very truly yours,



GAIL HUTTON  
City Attorney

Attachment: Exhibit A

cc: Ms. Kathryn Donovan, Esq., FPPC  
Teresa Cragie, Esq., Pillsbury, Madison & Sutro  
Elliot Block, Esq., FPPC

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In any case, it is impossible to place a value upon the exemption from the minimum. If we were to assume a value, persons who did not use the Club would be deemed to have received a more valuable gift than those who use the Club because persons who use the Club pay fair market value and receive no value from the exemption. This result would be inconsistent with the Commission's regulations, which value a club pass by the number of times used, and would be inconsistent with the definition of "gift" in §82028, which focuses on payments, rebates, and discounts received by an official.

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